



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
CARIBBEAN ENVIRONMENTAL PROTECTION DIVISION
CITY VIEW PLAZA, SUITE 7000
#48 165 RD. KM 1.2
GUAYNABO, PR 00968-8069

JAN 25 2018

CERTIFIED MAIL -RETURN RECEIPT REQUESTED

Article Number: 7015 0920 0000 8689 0249

Carlos O. Sánchez
President
Homeca Recycling and Demolition Corp.
1575 Ave. Muñoz Rivera
PMB 120
Ponce, Puerto Rico, 00717-0211

Re: **Information Request Letter Pursuant to Section 114 of the Federal Clean Air Act
EPA Index Number CAA-02-2018-1452**

Dear Sir:

The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* ("CAA" or the "Act"), at Section 114, 42 U.S.C. § 7414, authorizes the U.S. Environmental Protection Agency ("EPA") to require submittal of information to, among other things, assess compliance with the Act and regulations promulgated pursuant to the Act. This letter ("Information Request") requires Tallaboa Industrial Park, LLC ("Tallaboa") and Homeca Recycling and Demolition Corp./ Homeca Recycling Center Co. Inc. ("Homeca") (herein together the "Parties") to submit information about its recent demolition, renovation, clean up, removal and/or disposal activities at the Puerto Rico Olefins facility located at Tallaboa Poniente Ward, Peñuelas, Puerto Rico ("Facility") to demonstrate compliance with Section 112 of the Act and its attendant regulations, which are codified at 40 C.F.R. Part 61 Subpart M ("Asbestos NESHAP Regulations").

Pursuant to Section 114 of the Act, this Information Request requires you to submit all of the information requested by EPA in **Enclosure 1**. Failure to submit the requested information required by this Information Request is a violation of Section 114 of the Act, and may result in an order to comply, an order for administrative penalties, or a civil action for penalties and injunction requiring compliance pursuant to EPA enforcement authority provided at Section 113(a) of the Act. See **Enclosure 2**. In accordance with Section 113(c)(2)(A) of the Act, any person who knowingly makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals, or fails to file a response to this requirement may be subject to criminal penalties.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, stamped or typed legend or other suitable form of notice must be placed on or attached to the document, with language such as "trade secret," "proprietary" or "company confidential." Allegedly confidential portions of non-confidential documents should be clearly identified, and may be submitted separately to facilitate identification and handling by EPA. For each confidentiality claim, the date or occurrence of

any event after which the information can be released should be indicated, if applicable. If no confidentiality claim accompanies the information received by EPA, it may be made available to the public without further notice to you. EPA will disclose information covered by a confidentiality claim only to the extent allowed by, and in accordance with, the procedures set forth in 40 C.F.R. § 2.201 *et seq.* (See 41 Fed. Reg. 36,902 (Sept. 1, 1976)).

In order to fully comply with this Information Request, your response if combined in one document on behalf of all Parties, must include for each one of the Parties a completed Certification of Response (*see Enclosure 3*), notarized by a notary public and signed by each one of you or a duly authorized government official. If you submit individual responses, you must also comply with the same requirement, individually. Your responses to the questions in **Enclosure 1**, including all supporting documents and the Certification of Response, must be submitted to EPA **within ten (10) calendar days after receipt of this Information Request**. Please mail your response to:

Mr. Carlos M. Rivera Velázquez
Multimedia Permits and Compliance Branch
U.S. Environmental Protection Agency, Region 2
Caribbean Environmental Protection Division
City View Plaza II - Suite 7000
48 Rd. 165 Km. 1.2
Guaynabo, PR 00968-8069.

Any request for an extension of time to respond to this Information Request, or any portion of this Information Request, must be made in writing and must include the reasons for your delay in responding and the requested later date for responding. An extension of time will be effective only if granted by EPA in writing.

Your response(s), in order to be complete, must be signed by you or another duly authorized representative of each of the Parties, acknowledging that the signatories have read this letter. Failure to respond in full to this requirement is a violation of 42 U.S.C. § 7414, and may result in a finding of violation and an order to comply, an order for administrative penalties or a civil action for penalties and an injunction requiring compliance pursuant to EPA enforcement authorities at 42 U.S.C. § 7413(a)(3) and (4). Pursuant to 42 U.S.C. § 7413(c)(2)(A), any person who knowingly makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals, or fails to file a response to this requirement is subject to criminal penalties.

Please include the above-cited reference number, CAA-02-2018-1452, in any and all of your response(s) to this Information Request. If within one year of the date of this Information Request, you obtain information different from or in addition to the information provided in response to this Information Request, or if there is any change affecting the information submitted, you must notify EPA and submit the relevant information to EPA no later than twenty (20) business days after such information becomes available.

You may address any questions concerning this matter to Mr. Carlos M. Rivera-Velázquez, Environmental Scientist of my staff, at (787) 977-5846, or your legal counsel may contact Mr. Héctor L. Vélez Cruz, of the Office of Regional Counsel at (787) 977-5850.

Cordially

A handwritten signature in blue ink, appearing to read 'C.R.P.', is positioned above the printed name.

Carmen R. Guerrero Pérez

Director

Caribbean Environmental Protection Division

Enclosures:

cc: Mrs. Tania Vázquez
President
Puerto Rico Environmental Quality Board

Mrs. Carmen Sánchez
President
Homeca Recycling Center Co. Inc.
PMB 323-200
Ave. Rafael Cordero 140
Caguas, Puerto Rico, 00725

ENCLOSURE 1

INFORMATION REQUEST PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT

This information request seeks information regarding Tallaboa Industrial Park, LLC ("Tallaboa") and Homeca Recycling, Inc. ("Homeca") (herein together the "Parties") compliance with 40 C.F.R. Part 61 Subpart M, National Emission Standard for Asbestos, as the main entities responsible for the demolition or "clean up" project, removal and disposal activities conducted at in the area of the Puerto Rico Olefins facility located at Tallaboa Poniente Ward, Peñuelas, Puerto Rico ("Facility") that is subject to the "Work Plan to Comply with Compliance Order, CAA-02-2014-1009, dated September 2015," as amended.

Part I: Instructions

- A. Provide a complete and separate narrative response to each paragraph in Part III below, including but not limited to producing all documents and data requested by the paragraph. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any document.
- B. Precede each of your responses with the number of the paragraph to which it corresponds and at the end of each response identify the person(s) that provided the information that was used or considered in responding to that question, as well as each person that was consulted in the preparation of that response. If you produce documents or data in response to a question, label or mark those items in such a way so that EPA can determine which materials correspond to which question.
- C. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
- D. Provide responses to the best of your ability, even if the information sought was never documented in writing or if supporting documents are no longer available. Consult with all pertinent employees or other personnel in preparing your responses. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.
- E. Where documents or information requested by a specific paragraph are not in your possession, custody or control, say so in your response to that paragraph and identify any source that either possesses or is likely to possess the documents or information.

Part II: Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401, 40 C.F.R. Part 61, Subpart M and other CAA implementing regulations. Additional definitional clarification is specified below.

- A. The term "site" shall mean that portion of the property, including all buildings and structures

thereon, of the Puerto Rico Olefins facility located at Tallaboa Poniente Ward, Peñuelas, Puerto Rico, that is subject to the “Work Plan to Comply with Compliance Order, CAA-02-2014-1009, dated September 2015,” as amended.

- B. The term “clean up” shall mean all work conducted at the site, including, but not limited to, demolition, renovation, clean-up activities, removal and/or disposal of any wall/structure replacement, etc., for the **past six (6) months** from the date of this Information Request.
- C. The term “document” and “documents” shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these.
- D. The term “you” shall mean the addressee of this Information Request, the addressee’s officers, partners, managers, employees, contractors, trustees, successors, predecessors, assigns, and agents.
- E. The term “Work Plan” shall mean the work plan submitted by Tallaboa and Homeca dated September 18, 2015, and approved by EPA on October 2, 2015, as amended, including a schedule for completion of asbestos clean-up, removal and disposal activities at the Facility, and requiring the Parties to comply with all requirements of the Asbestos NESHAP, including proper notification, reporting, work practice, waste disposal and recordkeeping requirements.

Part III: Information Request

Please provide responses to the following questions within ten (10) days of your receipt of this Information Request. Submit responses in electronic format where appropriate and available.

Building Identification

- 1. Provide a list of all the buildings and/or structures at the site that were included in the “clean up” project. Include each building and/or structure’s name and/or designation number or letter or location on a map/site diagram that uniquely identifies it, the actual start and end date of the work at each building and/or structure and the actual start and end date of when the debris and/or asbestos containing material was removed from each building and/or structure. Include a description of what work was completed in these buildings and/or structures and who conducted such (i.e. which contractors or the Parties’ employees).
- 2. Provide a copy of all contracts, and any amendments thereto, related to the Facility and entered by and/or between the Parties and/or any other entity or person involved in activities, including but not limited to clean-up activities, at the Facility (this includes any contract entered with the owner of the Facility, if different from the parties mentioned above, and also any current tenant at the Facility).

3. Provide the name(s), contact person(s), address(es) and phone number(s) of all entity or person that has been engaged in activities at the Facility related with the clean-up.

Asbestos Survey Report

4. State whether an asbestos inspection (i.e. asbestos survey report) was done to determine if asbestos-containing materials (ACM) were present in the building(s) and/or structure(s) identified in Question 1, prior to the start of the "clean-up" activities.
5. Attach copies of all asbestos inspection reports. These asbestos reports should include, but not be limited to: the date(s) on which the inspection was conducted; the name(s) and qualifications of the person(s) who did the survey; sampling and analyses of suspected asbestos-containing materials; and the locations, identifications, and quantities of all asbestos-containing materials found within the buildings.
6. State whether if instead of conducting an asbestos inspection (survey) you assumed that all components of the building(s) and/or structure(s) identified in Question 1 were ACM in order to have these materials removed and disposed of as ACM.

Building/Structure Demolition and/or Asbestos Removal Reports

7. If the buildings and/or structures identified in Question 1 were found or assumed to have ACM, clearly identify each affected building and/or structure (facility) as defined in 40 C.F.R. § 61.141, which commenced clean-up, renovation, and/or demolition and:
 - a. For each affected building/structure identified, indicate the date on which clean-up, demolition or renovation was commenced and describe the specific act or occurrence which constituted the commencement.
 - b. For each affected building/structure identified, indicate the date on which the clean-up, demolition or renovation was completed, and if it has not been completed, please indicate a date when you estimate that it will be completed.
 - c. For each affected building/structure identified, please indicate when you submitted to the Puerto Rico Environmental Quality Board (PREQB) a request for any permit to operate an emission source and to perform demolition and renovation activities including those activities related with asbestos containing material. Please provide copies of all permits issued by PREQB. If no permit has been issued, please indicate the reasons why it has not been issued.
 - d. For each affected building/structure identified, please state if the following notifications, required by the NESHAPs, were sent to the EPA Regional Office (in this case the Caribbean Environmental Protection Division (CEPD), Region 2 [See 40 C.F.R. §

61.4(a))]:

- i. notification of the demolition and renovation date of an affected facility [see 40 C.F.R. § 61.145 (b)(2)],
- ii. notification of an anticipated date of initial startup of an affected facility [see 40 C.F.R. § 61.145 (b)(3)], and
- iii. Notification of the actual date of initial startup of an affected facility [see 40 C.F.R. § 60.7 (b)(3)].

If no information was submitted, please explain why.

- e. For each affected building/structure identified, please state if the following notifications, required by the NESHAPs, were sent to the PREQB [see 40 C.F.R. § 61.4(b)]:
 - i. notification of the demolition and renovation date of an affected facility [see 40 C.F.R. § 61.145 (b)(2)],
 - ii. notification of an anticipated date of initial startup of an affected facility [see 40 C.F.R. § 61.145 (b)(3)], and
 - iii. notification of the actual date of initial startup of an affected facility [see 40 C.F.R. § 60.7 (b)(3)].

If no information was submitted, please explain why.

- f. Provide copies of all notifications referred to in Questions 4(d) and (e) above.

8. From the list of buildings/structures identified in Question 1 above, clearly identify (if known) each affected facility, as defined in 40 C.F.R. § 61.145, which commenced demolition and/or renovation for the period beginning in August 2017 through the date of this Information Request. Also, please:

- a. Indicate the date on which clean-up, demolition and/or renovation was commenced and describe the specific act or occurrence which constituted the commencement.
- b. Indicate the name of the asbestos abatement contractor or subcontractor who performed the demolition and/or renovation, name of the official, address and phone number. Attach copies of all contractors' respective state license.
- c. For each affected facility identified, indicate the date on which the facility demolition or renovation was completed, and if it has not been completed, please indicate a date when you estimate that it will be completed.
- d. For each affected facility identified, provide copies of any permit issued by the PREQB to operate an emission source and to perform demolition and renovation activities including those activities related with asbestos containing material.

9. Regarding the asbestos containing materials please provide the following information:
- a. State the amount (in linear feet, square feet, or cubic feet) of ACM that was removed.
 - b. State whether the material was friable or nonfriable, provide information as to the exact locations from which ACM were removed.
 - c. Provide specific information as to the exact location(s) where the ACM was placed.
 - d. Indicate if the ACM was moved from the location it was originally placed and if so, indicate the exact location where it was moved.
 - e. Provide the names of the contractors, subcontractors or employees that participated in the above activities mentioned in this paragraph.
 - f. If applicable, to satisfy this request, attach copies of any asbestos abatement specifications for the asbestos removal.
10. Attach copies of all signed waste shipment records which have been prepared in connection with the disposal of asbestos-containing waste material from the Facility.
11. Please provide copies of any record and information of any disposal site (name of facility, address, contact information, etc.) that the Parties have used to transfer materials from the Facility.
12. If ACM were not removed from the Facility prior to demolition activities, state the reason why, and provide an explanation of the work practices used to demolish and/or renovate the Facility with ACM in place; an explanation on the methods used to dispose of all building debris; and the names of the contractors or subcontractors who supervised this activity.

Work Plan

13. Describe any mobilization of personnel and equipment to prepare the Facility for cleanup, activities, demolition and/or renovation occurred within the period of August 2017 through December 2017.
14. State whether any monitors were placed prior to commencing demolition and/or renovation activities.
15. Please provide a description of work practices and engineering controls used to prevent emissions of asbestos at the site as part of the cleanup activities, demolition and/or renovation that occurred within the period of August 2017 through December 2017.
16. Submit a revised schedule for implementation and completion of the Work Plan.
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ENCLOSURE 2

TITLE 42--THE PUBLIC HEALTH AND WELFARE CHAPTER 85--AIR POLLUTION PREVENTION AND CONTROL SUBCHAPTER I--PROGRAMS AND ACTIVITIES

Part A--Air Quality and Emission Limitations

Sec. 113. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28 of the United States Code)--

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d), or
- (C) bring a civil action in accordance with subsection (b).

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under Title V are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with Title V. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as ``period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by--

- (A) issuing an order requiring such person to comply with such requirement or prohibition,
- (B) issuing an administrative penalty order in accordance with subsection (d), or
- (C) bringing a civil action in accordance with subsection (b).

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this Title, section 303 of Title III, Title IV, Title V, or Title VI, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or Titles, or for the payment of any fee owed to the United States under this chapter (other than Title II), the Administrator may--

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 305, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of the Act or with a term or condition of any permit or applicable implementation plan promulgated or approved under the Act.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the Act relating to the construction of new sources or the modification of existing sources, the Administrator may--

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;
- (B) issue an administrative penalty order in accordance with subsection (d), or
- (C) bring a civil action under subsection (b). Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.
- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this Title, section 303 of Title III, Title IV, Title V, or Title VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this Act, or for the payment of any fee owed the United States under this Act (other than Title II).
- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this Act (other than Title II) and any noncompliance assessment and nonpayment penalty owed under

section 120, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 111(e) of this title (relating to new source performance standards), section 112 of this title, section 114 of this title (relating to inspections, etc.), section 129 of this title (relating to solid waste combustion), section 165(a) of this title (relating to preconstruction requirements), an order under section 167 of this title (relating to preconstruction requirements), an order under section 303 of the Title III (relating to emergency orders), section 502a(a) or 503(c) of the Title V (relating to permits), or any requirement or prohibition of Title IV (relating to acid deposition control), or Title VI (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or Titles, and including any requirement for the payment of any fee owed the United States under this Act (other than Title II) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly--

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this Act; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this Act shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 2 years, or both. If a conviction of any person

under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this Title, Title III, IV, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 of the United States Code, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Superfund Amendments and reauthorization Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 112 of this Act, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Superfund Amendments and reauthorization Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 112 of this Act, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 of the United States Code, or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under Title V, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury--

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the

defendant, may not be attributed to the defendant; except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent. The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 302(e), any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that

such person has violated or is violating such requirement or prohibition); or
(B) has violated or is violating any other requirement or prohibition of Title I, III, IV, V, or VI, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this Act, or for the payment of any fee owed the United States under this Act (other than Title II); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made. The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5 of the United States Code. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the Act, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 304(a), the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 307(a), or actions under section 114 of the Act, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 304(a) of the Act, or an assessment may be made under section 120, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this Title or Title III, IV, V, or VI of this Act enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this Act to which the United States is a party (other than enforcement actions under section 113, section 120, or Title II, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the **Federal Register**

to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this Act. Nothing in this subsection shall apply to civil or criminal penalties under this Act.

(h) Operator

For purposes of the provisions of this section and section 120, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

ENCLOSURE 3

CERTIFICATION OF RESPONSE

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request, I am under an obligation to supplement my response to the Information Request if any additional information relevant to the matters should become known or available to me.

NAME (print or type)

TITLE (print or type)

SIGNATURE

Affidavit No. _____

Sworn to before me this ____ day of _____, 2018, in _____, Puerto Rico,

Notary Public

